IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 120 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

SHREYAS LAND DEVELOPMENT CORPN

Appearance:

1. INCOME TAX REFERENCE No. 120 of 1986
NOTICE SERVED for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 09/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the revenue, the following question has been referred to this Court for its opinion under the provisions of Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), by the Income Tax Appellate Tribunal, Ahmedabad bench `C'.

"Whether on the facts and in the circumstances of the case and in law the Tribunal was right in coming to the conclusion that since the assessment order was passed by the I.T.O. u/s 143 (3) read with Section 144-B of the I.T. Act the order of the C.I.T. u/s. 263 was invalid?"

2. Learned advocate Shri Bharat Naik has appeared for the applicant whereas nobody has appeared for the respondent-assessee, though the respondent has been served.

3. Learned advocate Shri Bharat Naik has submitted that the tribunal, while passing the impugned order had referred to and relied upon the decision rendered by the Special Bench of the Tribunal in the case of Commissioner of Income Tax v. East Coast Marine Products (P.) Ltd. and Another. After taking into account the decision rendered by the Special Bench in the said case, wherein a similar legal question has been raised, the Tribunal came to the conclusion that the Commissioner of Income Tax was not empowered to take into revision an order passed by the Assessing Officer under Section 143 (3) read with Section 144-B of the Act.

4. During the pendency of this reference, the decision which was rendered by the Special Bench was under scrutiny of Andhra Pradesh High Court. The Andhra Pradesh High Court has reversed the order passed by the Special Bench in case of Commissioner of Income Tax v. East Coast Marine Products (P.) Ltd. and Another, 181, ITR 314.

5. We have gone through the facts of the case and law laid down by the Andhra Pradesh High Court in case of Commissioner of Income Tax v. East Coast Marine Products (P.) Ltd. and Another. We are in respectful agreement with the judgment delivered in the said case and accordingly we also answer the question referred to us in the negative i.e., in favour of revenue and against the assessee.

The reference stands disposed of with no order as to costs.

9.7.2001. (A.R. Dave, J.)

(D.A. Mehta, J.)

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